No. 15218

United States
Court of Appeals
for the Ninth Circuit

MARION B. FOLSOM, Secretary of the Department of Health, Education and Welfare,

Appellant,

vs.

GRETTA N. PEARSALL,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF COUNSEL

LLOYD H. BURKE,
United States Attorney;

WILLIAM B. SPOHN,
Assistant United States Attorney,
Post Office Building,
San Francisco, California,

Counsel for Appellant.

CHALMERS SMITH,
85 West Santa Clara Street,
San Jose, California,

Counsel for Appellee.

EXCERPT FROM DOCKET ENTRIES

1955

Aug. 16—Filed complaint—issued summons.

Oct. 17—Filed answer of defendant.

Dec. 9—Filed notice by deft. of motion for summary judgment, Dec. 19, 1955, with supporting memo.

Dec. 29—Filed notice by plaintiff of motion for summary judgment, Jan. 16, 1956.

1956

Jan. 23—Ordered after hearing, motion for summary judgment submitted (Roche).

Feb. 10.—Filed memo. opinion of Court (Judgment for Plaintiff).

Mar. 8—Filed notice by deft. of motion for reconsideration of memo. opinion on March 19, 1956, with memo. support.

Mar. 19—Ordered after hearing, motion to reconsider submitted (Roche).

Mar. 26—Filed suppl. memo. opinion of Court (Judgment deft. affirmed) (Roche).

Apr. 27—Filed summary judgment—motion of deft. for summary judgment denied; decision of Social Security Administrator reversed and proceedings remanded to Dept. of Health, Education and Welfare for further proceedings in conformity with this decision (Roche).

June 22—Filed notice of appeal by deft.

July 26—Filed appellant's designation of record on appeal.

In the United States District Court, for the Northern District of California, Southern Division

No. 34839

GRETTA N. PEARSALL,

Plaintiff,

vs.

MARION B. FOLSOM, Secretary of the Department of Health, Education and Welfare,

Defendant.

COMPLAINT FOR REVIEW OF DECISION OF SOCIAL SECURITY ADMINISTRATION

Plaintiff complains of the Defendant and for cause of action alleges:

I.

This action is brought under the provisions of Sections 202 to 209, both inclusive, of the Social Security Act, as amended (U.S.C.A., Title 42, Sections 402 to 409, both inclusive), and particularly Section 405g of the Social Security Act (U.S.C.A., Title 42, Section 405g).

II.

That plaintiff is now a resident of the County of Santa Clara, State of California, and of the Southern Division of the Northern District of California.

III.

That at all times herein mentioned, the Federal

Security Agency and the Department of Health, Education and Welfare were or now are agencies of the United States of America; that defendant Marion B. Folsom is now the duly appointed, qualified and acting director of the said Department of Health, Education and Welfare, and that the Social Security Administration is now a division of said Department charged with the duty of administering the Social Security Act.

IV.

That plaintiff is the widow of Delbert L. Pearsall, Social Security Account Number 554-07-4368, who died on October 25, 1952; that plaintiff married said Delbert L. Pearsall on the 19th day of May, 1928, and was living with and supported by said Delbert L. Pearsall during the twenty-four (24) years immediately preceding his death.

V.

That plaintiff is not entitled to widow's insurance benefits or old age insurance benefits under the Social Security Act as she was then and still is under the age of sixty-five (65).

VI.

That a daughter, Sandra Grace Pearsall, was born, the issue of said marriage.

VII.

That said Delbert L. Pearsall was a fully insured wage-earner under the Social Security Act and was

entitled to maximum benefits under said Act on the basis of said Delbert L. Pearsall's wages and self-employment income.

VIII.

That on the 10th day of November, 1952, plaintiff filed her application for mother's insurance benefits and an application for child's insurance benefits for said Sandra Grace Pearsall with the Social Security Administration; that plaintiff at that time had, and still does have in her care her said child, Sandra Grace Pearsall; that plaintiff's application for mother's insurance benefits for herself, and child's insurance benefits for her daughter were allowed by the Social Security Administration and payments by the Administration to plaintiff and said daughter were commenced in the month of October, 1952; that said Sandra Grace Pearsall ever since has been, and is now receiving maximum child's insurance benefits.

IX.

That plaintiff received such benefits until the month of June, 1954, when she advised the Social Security Administration that she had become married to one Frank Richard, on or about the 24th day of June, 1954; that payments to plaintiff by the Social Security Administration were discontinued as of June, 1954.

X.

That on the 19th day of November, 1954, plaintiff filed a Complaint for Annulment of said marriage

against Frank Richard in the Superior Court of the State of California, in and for the County of Santa Clara; that the said complaint for annulment was based on the grounds that the marriage was voidable in that the Defendant had fraudulently induced the plaintiff to enter into said marriage; that on the 9th day of December, 1954, said Court made and issued its Decree of Annulment of said marriage, the decree reciting amongst other things as follows: "Now, therefore, it is ordered, adjudged and decreed that Plaintiff is entitled to an annulment; and that the marriage between the said Plaintiff Gretta Richard and the said Defendant Frank Richard, be and the same is hereby declared wholly null and void from the begininng * * *"

XI.

That thereafter the plaintiff filed her claim for reinstatement of mother's insurance benefits due her under the Social Security Act effective with the month of June, 1954, and was denied such benefits by the Bureau of Old-Age and Survivors Insurance; that plaintiff filed a request for a hearing before a Referee of the Social Security Administration; that such hearing was held on June 9th, 1955, and said Referee denied her said benefits, whereupon plaintiff filed a Request for Review of Referee's Decision with the Appeals Council of the Social Security Administration at Washington, D. C., which Council on July 1, 1955, denied the said Request for Review, with sixty (60) days allowed in which to file civil action in the District Court of the United States

for review of the matter; that this action is begun within the said time limit.

Wherefore, plaintiff prays that this Court review the proceedings, findings, and decision of the said Social Security Administration in this matter and enter herein upon the pleadings and transcript of the records its judgment reversing or modifying the decision of the Administration and its Administrator, the defendant herein, so as to grant to the plaintiff reinstatement of her mother's insurance benefits retroactive to the month of January, 1955, and for the continuance of said benefits which plaintiff is entitled under the terms of the Social Security Act, as amended, and that plaintiff may have such other and further relief in the premises as equity and this Court shall deem appropriate.

MALOVOS, MAGER,
NEWCOMER & CHASUK,

By /s/ CHALMERS SMITH,
Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed August 16, 1955.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT FOR REVIEW

The Defendant, by the undersigned attorneys in his behalf, hereby answers the complaint in this cause as follows:

I.

Defendant denies the allegations in paragraph I of the complaint, except that he admits that this action is brought under the provisions of Section 205(g) of the Social Security Act, as amended (42 U.S.C.A. 405(g)), but Defendant denies that the Court has any jurisdiction in "equity" in this action, or any jurisdiction to grant to the Plaintiff reinstatement of mother's insurance benefits or to order the continuance of said benefits, as prayed for in the complaint.

II.

Defendant admits the allegations in paragraphs II, V, and VI of the complaint.

III.

Defendant admits the allegations in paragraph III of the complaint, except that he denies the allegations with respect to the Federal Security Agency, which was abolished by Reorganization Plan No. 1 of 1953 (18 F.R. 2053, 67 Stat. 631, 5 U.S.C.A. 623 fn.), and also except that defendant denies the allegation that he is the "acting director" of the Department of Health, Education, and Welfare. Defendant is the Secretary of said Depart-

ment, his correct official title being Secretary of Health, Education, and Welfare.

IV.

Defendant admits the allegations in paragraph IV of the complaint, except that he denies the allegation that the Plaintiff is the widow of Delbert L. Pearsall.

V.

Defendant denies the allegations in paragraph VII of the complaint, except that he admits the allegation that said Delbert L. Pearsall was a fully insured wage earner under the Social Security Act. Defendant states that said Delbert L. Pearsall died before attaining the minimum age necessary for entitlement to old-age insurance benefits under said Act.

VI.

Defendant admits the allegations in paragraph VIII of the complaint, except that he is without knowledge or information sufficient to form a belief as to the truth of the allegation that the Plaintiff "still does have in her care her said child, Sandra Grace Pearsall."

VII.

Defendant denies the allegations in paragraph IX of the complaint, except that he admits that Plaintiff received such benefits until, by letter dated July 1, 1954, she advised the Social Security Administration that she had married Frank Richard on June 25, 1954. Defendant also admits that pay-

ments to Plaintiff of mother's insurance benefits were discontinued as of June, 1954.

VIII.

Defendant denies the allegations in paragraph X of the complaint, except that he admits that on the 19th day of November, 1954, Plaintiff filed a complaint against Frank Richard in the Superior Court of the State of California, in and for the County of Santa Clara, in which complaint she prayed for annulment of her marriage to Frank Richard, or that "said marriage be dissolved by an interlocutory judgment of divorce." Defendant also admits that said complaint, insofar as what purports therein to be Plaintiff's first cause of action, was based on the grounds that the marriage was voidable in that Frank Richards had fraudulently represented to the Plaintiff that he intended to consummate said marriage, and that Plaintiff allegedly "entered into said marriage contract solely relying on said representation * * *." Defendant also admits the allegation that on the 9th day of December, 1954, said court made and issued its Decree of Annulment of said marriage, the decree reciting amongst other things as follows: "Now, therefore, it is ordered, adjudged and decreed that Plaintiff is entitled to an annulment; and that the marriage between the said Plaintiff Gretta Richard and the said Defendant Frank Richard, be and the same is hereby declared wholly null and void from the beginning * * *."

IX.

Defendant admits the allegations in paragraph XI of the complaint, except that he denies the allegation that mother's insurance benefits are due the Plaintiff.

X.

In accordance with the provisions of Section 205(g) of the Social Security Act, as amended, supra, Defendant files herein as part of this answer a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based.

XI.

The Defendant asserts that the findings of fact of the Secretary of Health, Education, and Welfare are supported by substantial evidence and are conclusive.

XII.

The Defendant further asserts that the plaintiff has no claim upon which relief can be granted, as is shown by the provisions of the Social Security Act, as amended; the regulations of the Social Security Administration promulgated thereunder; the transcript of the record upon which the decision complained of was made; and the findings and conclusions of the Secretary of Health, Education, and Welfare.

Wherefore, the Defendant prays for judgment dismissing the complaint with costs and disbursement, and for judgment in accordance with Section 205(g) of the Social Security Act, as amended,

supra, affirming the decision complained of; and for such other and further relief as the Court may deem appropriate in the premises.

LLOYD H. BURKE,
United States Attorney;

By /s/ WM. B. SPOHN,
Assistant United States Attorney; Attorneys for Defendant.

Affidavit of mail attached.

[Endorsed]: Filed October 17, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION, MOTION FOR SUMMARY JUDGMENT, REASONS AND AUTHORITIES

Notice of Motion

To the Plaintiff and her attorneys, Malovos, Mager, Newcomer & Chasuk, 85 West Santa Clara Street, San Jose, California:

Please Take Notice that the undersigned will make the following motion before the Master Calendar Judge of this Court in Room 244, Post Office Building, Seventh and Mission Streets, San Francisco, California, at 9:30 a.m. on the 19th day of December, 1955, or as soon thereafter as the matter may be heard.

Motion for Summary Judgment

The Defendant hereby moves the Court for summary judgment on his behalf and against the plaintiff in this cause, on the grounds that the decision of the Defendant's predecessor in office, which the petition seeks to have reviewed and reversed, is correct and supported by substantial evidence, and therefore conclusive under Section 205(g) of the Social Security Act here involved (42 USCA 405(g)), and that the Defendant is accordingly entitled to such judgment as a matter of law for the reasons and upon the authorities hereafter set forth.

Reasons and Authorities

This motion is based on Rule 56 of the Federal Rules of Civil Procedure and the following:

1. The present notice, reasons and authorities, and accompanying memorandum in support;
2. The Plaintiff's complaint for review;
3. The Defendant's answer to the complaint and transcript of record filed therewith.

On the basis of the foregoing, the Defendant requests the Court to render summary judgment in his behalf and against the plaintiff in this cause.

LLOYD H. BURKE,
United States Attorney;
By /s/ WILLIAM B. SPOHN,
Assistant United States Attorney; Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed December 9, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION, MOTION FOR SUMMARY JUDGMENT, REASONS AND AUTHORITIES

Notice of Motion

To the Defendant and his attorneys, Lloyd H. Burke, United States Attorney; William B. Spohn, Assistant United States Attorney, 422 Post Office Building, Seventh and Mission Streets, San Francisco 1, California.

Please Take Notice that the undersigned will make the following motion before the Master Calendar Judge of this Court in Room 244, Post Office Building, Seventh and Mission Streets, San Francisco, California, at 9:30 a.m. on the 16th day of January, 1956, or as soon thereafter as the matter may be heard.

Motion for Summary Judgment

The Plaintiff hereby moves the Court for summary judgment on her behalf and against the defendant in this cause, on the grounds that the decision of the Defendant's predecessor in office, which the petition seeks to have reviewed and reversed, is incorrect as a matter of law and therefore not conclusive under Section 205(g) of the Social Security Act here involved (42 USCA 405(g)), and that the Plaintiff is accordingly entitled to such judgment as a matter of law for the reasons and upon the authorities hereafter set forth.

Reasons and Authorities

This motion is based on Rule 56 of the Federal Rules of Civil Procedure and the following:

1. The present notice, reasons and authorities, and accompanying memorandum in support;

2. The Plaintiff's complaint for review;

3. The Defendant's answer to the complaint and transcript of record filed therewith.

On the basis of the foregoing, the Plaintiff requests the Court to render summary judgment in her behalf and against the defendant in this cause.

MALOVOS, MAGER,
NEWCOMER & CHASUK,

By /s/ CHALMERS SMITH,
Attorneys for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed December 29, 1955.

In the United States District Court for the Northern District of California, Southern Division

[Title of Cause.]

MALOVOS, MAGER, NEWCOMER & CHASUK,
Attorneys for Plaintiff.

LLOYD H. BURKE,
United States Attorney;

WILLIAM B. SPOHN,
Assistant United States Attorney;
Attorneys for Defendant.

MEMORANDUM OPINION

Roche, Chief Judge:

This action is brought under § 205 (g) of the Social Security Act, as amended (hereinafter referred to as the "Act"), 42 U.S.C.A. § 405 (g), which provides for judicial review of a "final decision of the Administrator." The decision in this case was rendered on June 13, 1955, and became final on June 30, 1955, when plaintiff's request for review was denied.

The question for decision in this case is as follows: When "mother's insurance benefits" are awarded to a claimant as the widow of wage earner, and such benefits are terminated by reason of her remarriage, is her right to benefits revived upon her procurement of an annulment of the remarriage, even though the remarriage was not void, but was voidable?

Section 202 (g) of the Act, 42 U.S.C.A. §402 (g) provides for mother's insurance benefits and reads in pertinent part as follows:

"(g) (1) The widow * * * of an individual who died a fully or currently insured individual after 1939, if such widow

" * * *

"(A) has not remarried,

" * * *

shall be entitled to a mother's insurance benefit for each month, beginning with the first month after August, 1950, in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: * * * she remarries * * *" (Emphasis added.)

The facts of this case are as follows:

In November, 1952, plaintiff applied for and was awarded mother's insurance benefits, effective October, 1952. On June 25, 1954, plaintiff married Frank Richard, informing the Social Security Administration by letter dated July 1, 1954. The marriage was entered into in California where both plaintiff and Mr. Richard resided. Payment of benefits was terminated effective June, 1954. Thereafter on November 19, 1954, the plaintiff filed a "Complaint for Annulment and/or Divorce" in the Superior Court of Santa Clara County, alleging as a first cause of action, that the defendant had fraudulently represented to the plaintiff that he intended to consummate said marriage, but in fact he never intended to, and did not consummate the

marriage; and alleging as a second cause of action, that said defendant had "inflicted on plaintiff a course of conduct resulting in mental cruelty." The prayer was for an annulment of the marriage or that "said marriage be dissolved by an interlocutory judgment of divorce." No answer was filed by the defendant. The court on December 9, 1954, made and issued its "Decree of Annulment," which decree among other things, recites as follows: "Now, therefore, it is ordered, adjudged and decreed that plaintiff is entitled to an annulment; and that the marriage between the said plaintiff Gretta Richard, and the said defendant Frank Richard, be and the same is hereby declared wholly null and void from the beginning; * * *."

Thereafter plaintiff requested that the Bureau reinstate mother's insurance benefits.

The defendant has been unable to cite any cases to the court directly holding that a voidable marriage, though annulled ab initio, is a remarriage within the meaning of the Act. The plaintiff, on the other hand, has cited cases dealing with the immediate problem, with the exception that Workmen's Compensation statutes are involved instead of the Act. Eureka Block Coal Co. vs. Wells, (1925) 83 Ind. App. 181, 147 N. E. 811; Southern Pacific Co. vs. Industrial Commissioner, (1939) 51 Ariz. 1, 91 P. 2d 700; Southern Railway Co. vs. Baskette, (1939) 175 Tenn. 253, 133 S. W. 2d 498; First National Bank vs. North Dakota Workmen's Compensation Bureau, (1955) 68 N. W. 2d 681.

The conclusion to be drawn from the above cases is stated in Eureka Block Coal Co., supra:

"Giving the provision referred to a broad and liberal construction, as we must, a marriage within the meaning of the statute is not a void or voidable marriage which may at once be annulled, but a valid and subsisting marriage." (Emphasis added.)

The holding in First National Bank vs. North Dakota Workmen's Comp. Bureau, supra, is particularly revealing as North Dakota and California have identical annulment statutes and California cases construing these statutes were held to be persuasive in North Dakota by the North Dakota Supreme Court. Quoted with approval in said case was the following language from the leading California case dealing with annulments of voidable marriages, McDonald vs. McDonald, 6 Cal. 2d 457, 461 P. 2d 163:

"A familiar analogy exists in the law of contracts. Thus a contract may be voidable and subject to rescission, because of some infirmity in its procurement, but, unless attacked by notice of rescission or by suit, will not be avoided, but will remain binding. Garcia vs. California Truck Co., 183 Cal. 767, 192 Pac. 708. So with voidable marriages. The parties may or may not exercise their legal right to have them annulled and if they do not exercise such right, the marriages are binding; but, when annulment is sought, it can be granted only if there was some element of invalidity in the contracting of the marriage. Thus, in Millar vs. Millar, 175 Cal. 796, 806, it is stated: 'Strictly speaking, the word "divorce" means a dissolution

of the bonds of matrimony, based upon the theory of a valid marriage, for some cause arising after the marriage, while an annulment proceeding is maintained upon the theory that, for some cause existing at the time of marriage, no valid marriage ever existed. This is true even though the marriage be only voidable at the instance of the injured party, or, in the words used in Estate of Gregorson, 160 Cal. 21, 25, "capable of being annulled." And the decree of nullity in such a proceeding determines that no valid marriage ever existed * * *' " (Emphasis added.)

The defendant primarily relies for authority in support of its contention that the annulled voidable marriage is a remarriage within the Act on the case of Hahn vs. Gray, Jr., (1953) 203 F. 2d 625. In this case the widow received a pension as the unremarried widow of a veteran. This pension was discontinued when, in 1947, she was remarried. Some time later a New York Court annulled the second marriage on the ground that it had been procured by fraud, and Mrs. Hahn thereupon applied for restoration of her pension, which application was denied by the administrator. This decision was affirmed by the District Court, which was then affirmed by the Court of Appeals.

The decision in this case is based entirely on a jurisdictional ground and that part of the decision dealing with the annulment question is entirely dicta. However, assuming for the purpose of argument that this part of the court's opinion states the law, the wording thereof differentiates the Hahn case from the instant one. The annulment in the

Hahn case was not an annulment ab initio, as were the annulments in this case and in the Workmen's Compensation cases cited as authority for plaintiff. Said the court in the Hahn case:

"The decree annuling Mrs. Hahn's second marriage, by its very terms, merely dissolved the marriage 'heretofore existing' between the parties; it did not purport to render the marriage void from its very inception. Moreover, that decree did not become effective until three months after it was handed down. The only possible conclusion is that Mrs. Hahn was legally remarried for some period of time; namely from the date of the ceremony until three months after the annulment decree."

It should also be noted that New York law allows a wife the right to support in an annulment action, whereas California, where the plaintiff in this action obtained her annulment, does not bestow such right. Support money cannot be given under the California law even to an innocent wife who has had her voidable marriage annulled. Millar vs. Millar, 175 C. 797, 167 P. 394.

The only other decision cited by the defendant based on somewhat similar facts to those in dispute here is the holding in Gaines vs. Jacobsen, (1954) 308 N. Y. 218, 124 N. E. 2d 290. In this case the New York Court of Appeals held that the annulment of a divorced wife's remarriage did not revive the obligation of her first husband under a separation agreement requiring annual payments for her support "until she shall remarry." In so holding the court overruled its own decision in Sleicher

vs. Sleicher, (1929) 251 N. Y. 366, 167 N. E. 501, and explained this result by saying:

"At the time of the Sleicher decision, it was impossible for a wife to obtain alimony or other support upon annulment of a marriage; it followed inexorably, from the theory that an annulled marriage never existed, that such a marriage created no subsequent duty of support. See Jones vs. Brinsmade, 183 N. Y. 258, 76 N. E. 22, 3 L. R. A., N. S., 192. To have held otherwise than the court did in Sleicher would, therefore, have deprived the wife in that case of any source of support whatsoever. However, since that time, the legislature has enacted section 1140-a of the Civil Practice Act, which provides that:

> " 'When an action is brought to annul a marriage or to declare the nullity of a void marriage, the court may give such direction for support of the wife by the husband as justice requires.'

"This new provision, respondent urges, by removing the primary and underlying motivation for the Sleicher decision, distinguishes that case from the one before us and justifies us in reaching a different conclusion. Appellant, on the other hand, contends that there is no basis for distinguishing Sleicher, and that it is dispositive of this appeal.

"While resolution of the dispute may not be easy, it is our opinion that the new enactment, after the date of the Sleicher decision, alters the situation before us so materially that it calls for a different result in this case."

It can be seen that the statutory law of New York cited in the Gaines decision, and upon which said decision is based, is different from the California law. Further, the question of whether a wife can or cannot receive support after an annulment of her marriage has been given great significance by the New York Court.

As a further possible defense to plaintiff's claim defendant points out that the California annulment statute (Civil Code § 86) provides that: "a judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them," and maintains that since the Social Security Administration was neither a party to the plaintiff's annulment action, or a party claiming under either party to said action it should not be bound by such decree. In support of this contention defendant has cited the case of Price vs. Price, 75 P. 2d 655, 24 Cal. App. 2d 462. The principle enunciated by the statute cited above is simply that a judgment of annulment shall not be conclusive as against third parties. This is demonstrated by the Price case. In that case the court looked behind the judgment of annulment and declared that said judgment was granted by a local court for a cause not authorized by Civil Code § 82, and therefore a third party (her husband of the first marriage) was not bound by said decree. In the instant case, applying the law of California, and therefore looking behind the judgment of annulment, we find that the annulment was granted on one of the grounds set forth under Civil Code § 86,

and therefore does not warrant complaint on the part of defendant.

Defendant submits that whatever might be the effect of the annulment decree as to plaintiff's status for state law purposes, here the real question is as to her status in relation to the provisions for "mother's insurance benefits" under the Act, the applicable provisions of which in clear and unambiguous language, provide for the "ending" of such benefits "with the month preceding the first month in which * * * she remarries" (Sec. 702 (g) of the Act, 42 U.S.C.A. § 402 (g). After reading all of the cases cited by counsel, and the sharp issues raised in their submitted briefs, it can be said that if as defendant states there be no ambiguity involved, at least "resolution of the dispute may not be easy." Gaines vs. Jacobsen, supra.

Aside from the case law, however, policy considerations regarding this question are in the favor of plaintiff. The defendant concedes in its brief that "mother's insurance benefits" and "widow's insurance benefits" are "designed to replace an economic loss (of support) usually sustained by a wife upon the death of her wage-earner husband." In the instant case plaintiff had a right before she remarried to receive mother's benefits for the rest of her life. She entered her remarriage in good faith, and if said marriage had been valid she would have given up all rights to such mother's benefits. Certainly it cannot be said that an imposition will be made upon the Social Security Fund to allow this plaintiff, who cannot be supported by her

second husband under the California law of annulment, to resume the position she held prior to this attempted remarriage. To otherwise penalize her would not seem to be in keeping with the liberal construction which has been accorded the Social Security Act. In this regard the court adopts the reasoning of the case of Sleicher vs. Sleicher, (1929) 167 N. E. 501, applying the doctrine of "relation" [back] or "recission from the beginning," that is, the annulment when decreed, puts an end to the marriage from the beginning. It is not dissolved as upon divorce. Certainly the plaintiff should not be allowed to claim against the fund for the period of the second marriage before its annulment, and she has not done so. In this connection, the doctrine of "relation" [back] is a fiction of law adopted * * * solely for the purposes of justice'" "and that is not * * * without limits, prescribed by policy and justice, * * *"' Gaines vs. Jacobsen, 124 N. E. 2d 290.

In accord with the foregoing it is ordered that judgment be entered herein in favor of plaintiff in accordance with Sec. 205 (g) of the Social Security Act, and Rule 56 of the Federal Rules of Civil Procedure.

Dated: February 10, 1956.

/s/ MICHAEL J. ROCHE,
Chief Judge,
U. S. District Court.

[Endorsed]: Filed February 10, 1956.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR RECONSIDERATION; REASONS AND AUTHORITIES

Notice of Motion for Reconsideration

To the Plaintiff and her attorneys, Malovos, Mager, Newcomer & Chasuk, 85 West Santa Clara Street, San Jose, California:

Please Take Notice that the undersigned will move the Court in Room 338, Post Office Building, Seventh and Mission Streets, San Francisco, California, at 9:30 a.m. on the 19th day of March, 1956, or as soon thereafter as may be practicable, to reconsider its Memorandum Opinion of February 10, 1956, in this cause for the reasons and upon the authorities hereinafter specified.

Reasons and Authorities

Since receiving the Memorandum Opinion of the Court in this cause, our attention has been called to the recent decision of the Supreme Court of California in the case of Sefton vs. Sefton, 45 A.C. 895, 291 P.2d 439, which conflicts in certain important respects with such Memorandum Opinion. In fact, the decision in the Sefton case so strongly supports the position of the Defendant United States of America in the present case, that we believe the Court may wish to reconsider its Memorandum Opinion accordingly.

In the Sefton case, the Supreme Court of California held that where a wife had been granted a

divorce with alimony to continue until her remarriage, and thereafter married another man—which remarriage was later annulled—the wife's voidable marriage was a "remarriage" within the provisions of California Civil Code, Section 139. That Section provides in pertinent part:

> "Except as otherwise agreed by the parties in writing, the obligation of any party in any decree, judgment, or order for the support and maintenance of the other party shall terminate * * * upon the remarriage of the other party."

The California court held therefore that the annulment decree did not revive the first husband's obligation to pay alimony notwithstanding the fact that the annullment decreed the remarriage as "null and void."

In the course of its decision, the California court discussed the decisions of the New York Court of Appeals in Sleicher vs. Sleicher, 251 N.Y. 356, 167 N.E. 501 (1929), and Gaines vs. Jacobsen, 308 N.Y. 218, 124 N.E. 2d 290 (1954), which this Court also considered in its Memorandum Opinion. Both of these cases had previously been cited by the Defendant United States of America in its memoranda supporting its motion for summary judgment, with particular reliance upon the decision in the Gaines case. This Court, however, considered the Gaines case to be so distinguishable as to leave the Sleicher case representing the New York law on the subject, and accordingly relied on the latter in the present case.

The Supreme Court of California held in the Sefton case (and in accordance with the contention made by the Defendant herein) that the decision by the New York Court of Appeals in the Gaines case had deprived the Sleicher case of any persuasive authority. The California court concluded its discussion of those cases with the following observation:

> "It is obvious that the reasoning in the Gaines case has deprived the Sleicher case of any present persuasive authority."

The opinion in the Sefton case also contains very helpful and illuminating statements by the California court concerning the doctrine or rule of "relation back" of a decree of annulment. The discussion of this doctrine or rule by the California court, including the case of McDonald vs. McDonald, 6 C.2d 457, 58 P.2d 163 (1936) upon which this Court relied in its Memorandum Opinion, also supports strongly the contentions of the Defendant herein that the annulment of the present Plaintiff's voidable remarriage did not have the effect of reconstituting her as the unremarried widow of the deceased wage earner.

Since the decision in the Sefton case was not cited by either party herein, nor mentioned by this Court in its Memorandum Opinion, we respectfully move for reconsideration. We submit that on the basis thereof, this Court should decide in favor of the Defendant United States of America and against

the Plaintiff as prayed in the Defendant's motion for summary judgment herein.

LLOYD H. BURKE,
United States Attorney;

By /s/ WM. B. SPOHN,
Assistant United States Attorney; Attorneys for Defendant.

Affidavit of mail attached.

[Endorsed]: Filed March 8, 1956.

[Title of District Court and Cause.]

MALOVOS, MAGER, NEWCOMER & CHASUK,
Attorneys for Plaintiff.

LLOYD H. BURKE,
United States Attorney;

WILLIAM B. SPOHN,
Assistant United States Attorney;
Attorneys for Defendant.

SUPPLEMENTAL MEMORANDUM OPINION

Roche, Chief Judge:

Defendant has moved for reconsideration of this court's memorandum opinion, filed on February 10, 1956, in which plaintiff was granted summary judg-

ment. In so moving, defendant has directed attention to the recent decision of Sefton vs. Sefton, 45 A.C. 895, 291 P. 2d 439, a case not heretofore cited either by plaintiff or defendant. In that case the Supreme Court of California has decided that a former husband's right to rely on the apparent "remarriage" of his divorced wife, is paramount to the general California rule as enunciated in the case of McDonald vs. McDonald, 6 Cal. 2d 457, 58 P. 2d 163, 104 A.L.R. 1290, which is, that an annulment "relates back" and erases a marriage and all its implications from the outset. The question now before the court, is what if any is the import of the Sefton decision. Does that decision control the issue in the instant case, namely, when is a widow to be considered as "remarried" within the provisions of Section 202(g) of the Social Security Act?

At the outset it should be preliminarily stated that the construction of the word "remarriage" has caused some difficulty. One need but read the reported cases to realize this fact. And as with the construction of many words, depending on whether one applies a liberal or strict construction, varying results have been reached.

In order to determine whether or not the Sefton case is controlling herein, one must analyze the reasoning of the California Supreme Court in arriving at its decision. The court stated that it feared that the first husband still living might be prejudiced, that he was entitled to rely upon his former wife's "apparent marital status" and thus be free to "recommit his assets previously chargeable to alimony

to other purposes." The court, after applying the test for determining whether the doctrine of "relation back" appertained,[1] concluded that it did not, because the law "look[s] less favorably upon the more active of two innocent parties when by reason of such activity a loss is sustained as the result of the misconduct of a stranger."

Immediately it is apparent that the rationale of the Sefton decision is that the innocent divorced husband had the right to rely on his wife's holding herself out as "remarried," as otherwise his rights might be prejudiced. In the court's view no such prejudice appears in the instant case, and for this reason the Sefton case is not in point. After all, plaintiff is an innocent party who will lose rights she otherwise would have enjoyed except for a third party's misconduct. An exception should not be made to the California rule of "relation back" so as to deprive an innocent plaintiff of Social Security benefits at least where, as here, it is clear that defendant has not been prejudiced. Plaintiff's benefits did not arise because of divorce but because of the death of her husband, Delbert Pearsall. The payments which he made into the Social Security Fund were completed at his death and in no way can be increased. Defendant has stood ready under

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[1]"The test for determining the applicability of the doctrine as applied to voidable marriages is whether it effects a result which conforms to the sanctions of sound policy and justice as between the immediate parties thereto, their property rights acquired during that marriage and the rights of their offspring."

the Social Security Act to pay plaintiff the benefits she was entitled to as the mother of her first husband's child. Whatever funds were available for dispersal before plaintiff's attempted "remarriage" are still available. No California case has been cited to the court wherein the word "remarriage," appearing in a beneficent type statute, e.g., Workmen's Compensation, has been construed.

The courts of other jurisdictions, when considering the word "remarriage" as used in statutes similar to the liberally construed Social Security statutes, have reinstated benefits, and have not considered voidable marriages which have been annulled ab initio as "remarriages" within the meaning of the statutes construed. Eureka Block Coal Co. vs. Wells, (1925) 83 Ind. App. 181, 147 N.E. 811; Southern Pacific Co. vs. Industrial Commissioner, (1939) 51 Ariz. 1, 91 P. 2d 700; Southern Railway Co. vs. Baskette, (1939) 175 Tenn. 253, 133 S.W. 2d 498; First National Bank vs. North Dakota Workmen's Compensation Bureau, (1955) 68 N.W. 2d 681.

In accord with the foregoing, the court upon reconsideration of the issues in this case affirms the judgment.

Date: March 26th, 1956.

/s/ MICHAEL J. ROCHE,
Chief Judge, U. S. District Court.

[Endorsed]: Filed March 26, 1956.

In the United States District Court for the Northern District of California, Southern Division

No. 34839 Civil

GRETTA N. PEARSALL,

Plaintiff,

vs.

MARION B. FOLSOM, Secretary of the Department of Health, Education and Welfare,

Defendant.

SUMMARY JUDGMENT

The above-entitled cause came on to be heard pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, on defendant's motion for summary judgment, filed December 9th, 1955, and plaintiff's motion for summary judgment, filed on or about the 29th day of December, 1955, and the cause having been presented, and the Court being fully advised, and the Court having entered its Order herein, denying the defendant's motion and granting the plaintiff's motion as a matter of law;

It Is Therefore Ordered, Adjudged and Decreed that upon the pleadings and transcript of the record, defendant's motion for summary judgment be, and the same is hereby denied; that plaintiff's motion for summary judgment be, and the same is hereby granted, the decision of the Social Security Administrator under review is reversed and the proceedings remanded (42 U.S.C. Sec. 405(g)) to the Department of Health, Education and Welfare for

further proceedings in conformity with this decision.

Dated this 27th day of April, 1956.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

Approved as to form.

LLOYD H. BURKE,
United States Attorney;
By /s/ WILLIAM B. SPOHN,
Assistant U. S. Attorney.

[Endorsed]: Filed and entered April 27, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the Defendant Marion B. Folsom hereby appeals to the United States Court of Appeals for the Ninth Circuit from the summary judgment entered in favor of the Plaintiff Gretta N. Pearsall on April 27, 1956, in this cause.

LLOYD H. BURKE,
United States Attorney;
By /s/ WILLIAM B. SPOHN,
Assistant United States Attorney; Attorneys for Defendant.

Affidavit of mail attached.

[Endorsed]: Filed June 22, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the attorneys for appellant:

Excerpt from Docket Entries.
Complaint.
Answer.
Notice of Defendant for summary judgment.
Notice of Plaintiff for summary judgment.
Memorandum Opinion of Court.
Notice of Defendant for Reconsideration.
Supplemental Memorandum Opinion of Court.
Summary Judgment.
Notice of Appeal.
Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 30th day of July, 1956.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ MARGARET P. BLAIR,
Deputy Clerk.

[Endorsed]: No. 15218. In the United States Court of Appeals for the Ninth Circuit. Transcript of Record. Marion B. Folsom, Secretary of the Department of Health, Education and Welfare, Appellant, vs. Gretta N. Pearsall, Appellee. On appeal from the United States District Court for the Northern District of California, Southern Division.

Filed July 31, 1956.

PAUL P. O'BRIEN,
Clerk.

In the United States Court of Appeals
for the Ninth Circuit

No. 15218

MARION B. FOLSOM, Secretary of the Department of Health, Education and Welfare,
Appellant,

vs.

GRETTA N. PEARSALL,
Appellee.

APPELLANT'S STATEMENT OF POINTS ON APPEAL

The Appellant, by his undersigned attorneys, presents the following statement of points on which he intends to rely herein:

I.

The District Court erred in holding that the plaintiff had not "remarried" within the meaning of Section 202(g) of the Social Security Act, as amended (42 U.S.C.A. Section 402(g)).

II.

The District Court erred in holding that the plaintiff's marriage to Frank Richard was not a "remarriage" within the meaning of said Section 202(g) of the Social Security Act, as amended.

III.

The District Court erred in holding that the plaintiff, who was the widow of Delbert L. Pearsall and who later remarried by marrying Frank Richard and thereafter obtained a decree of annulment in the Superior Court of the State of California, in and for the County of Santa Clara, was entitled to receive "mother's insurance benefits" as the "unremarried widow" of Delbert L. Pearsall.

IV.

The District Court erred in holding that the plaintiff, who as the unremarried widow of Delbert L. Pearsall had applied for and was awarded "mother's insurance benefits" under the aforesaid Section 202(g) of the Social Security Act, as amended, and whose benefits terminated upon her marriage to Frank Richard, was entitled to reinstatement of such benefits by reason of the decree of annulment of her marriage to Frank Richard which she ob-

tained as aforesaid in the Superior Court of the State of California, in and for the County of Santa Clara.

V.

The District Court erred in denying the defendant's motion for summary judgment, in granting the plaintiff's motion for summary judgment, and in reversing the decision of the defendant's predecessor in office, denying the plaintiff's application for reinstatement of the aforesaid benefits.

Dated: August 13, 1956.

Respectfully submitted,

LLOYD H. BURKE,
United States Attorney;

By /s/ WILLAM B. SPOHN,
Assistant United States Attorney; Attorneys for the Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed August 13, 1956.

[Title of Court of Appeals and Cause.]

STIPULATION AND ORDER

It Is Hereby Stipulated by and between the undersigned attorneys for the respective parties that the certified copy of the administrative transcript which was filed as part of the Defendant's answer to the complaint for review in this cause may be

considered as an exhibit in its original form without printing.

LLOYD H. BURKE,
United States Attorney;

By /s/ WILLIAM B. SPOHN,
Assistant United States Attorney, Attorneys for Appellant.

MALOVOS, MAGER,
NEWCOMER & CHASUK,

By /s/ CHALMERS SMITH,
Attorneys for Appellant.

[Endorsed]: Filed August 13, 1956.